

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 308 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

MAHENT ITWARGIRI GURU

Versus

STATE OF GUJARAT

Appearance:

MR PM VYAS for Petitioner
Mr.Y.F.Mehta, LAPP for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

Date of decision: 13/01/97

ORAL JUDGEMENT (Per H.L.Gokhale,J.)

This appeal arises from the judgment of the learned Sessions Judge, Kutch at Bhuj in Sessions Case No.64 of 1989 wherein, the appellant came to be convicted under Sec.18 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as "NDPS Act"),

and was awarded R.I. for 10 years and fine of Rs.1,00,000/- and in default of payment of fine, R.I. for six months.

2. The facts leading to the prosecution of the appellant, briefly stated, are as under:

2.1 The complainant herein is a police constable Mukundrai Premshankar Joshi, who was on duty at Gandhidham Railway Station on 17-5-1989. At about 10.00 AM, on that day, when a train arrived, he saw the accused travelling in a compartment and he suspected that he is carrying Narcotic Drugs. He accosted him and he along with another police constable Sajjansingh, took him to the nearest police station where PSI Mr.Gohil took charge of the matter. He recorded the complaint and thereafter, on search, 825 grams of Opium was found in possession of the accused. That was subsequently sent for Forensic Science Laboratory Examination and on being confirmed that it is Opium, the accused-appellant was prosecuted, leading to his conviction in Sessions Case No.64 of 1989.

3. The main submission advanced by Mr.P.M.Vyas, learned Advocate appearing for the appellant, is that there is a clear breach of Sec.50 of the NDPS Act. Although the accused-appellant was rightly accosted on suspecting that he was carrying Narcotic Drugs, it was required of the Officer that before the search of the person is made, he should be informed that if he so desires, his search will be done before a Gazetted Officer or a Magistrate as provided thereunder. He relied upon the judgment of the Honourable Supreme Court in State of Punjab vs.Balbir Singh reported in 1994 SC 1872 where the Supreme Court in para 26 has held that it is obligatory on the part of such Officer to inform the person to be searched accordingly. Failure to inform the person to be searched and if such person so requires, failure to take him before a Gazetted Officer or a Magistrate, would amount to non compliance of Sec.50 which is a mandatory provision, and it would affect the prosecution and vitiate the trial.

4. Accordingly, in the instant case, it will have to be held that the trial is vitiated for want of compliance of Sec.50 of N.D.P.S.Act.

5. In the circumstances, the appeal is allowed. The judgment of the learned Sessions Judge is set aside. The accused is ordered to be set at liberty forthwith, if not required in any other case. Fine, if paid, is ordered to

be refunded.
